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SOME REFLECTIONS ON Mr. ASGILL's Eſſay ON A REGISTRY FOR Titles of Lands.

Qui tacet, conſentire videtur.

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Rec. Dec. 22, 1904.

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IT may ſeem to give ſome Credit to this Eſſay, that it comes ſo lately to be animadverted upon, as tho' there were ſomething in it very weighty and ſubſtantial, that requir'd ſo much Time to Reply to. I confeſs, when I firſt read it, I expected 'twou'd quickly have met with a Rebuke; believing, that if any-body thought it worth his while, there was Cauſe and Room enough. For, truly, I conceiv'd, that the Author, on the great Confidence

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of his Understanding and Skill in the Law, had put the whole Profession under a necessity, either of being thought to approve his Notions by a Silence; or else, that some or other of them shou'd take a little pains to Examin them.

I profess my self directed to the same end, which He promises for himself, *viz.* the search after, and discovery of Truth. And 'twas this excited in me the desire of having his Mistakes laid open; especially being made the Foundations of an Argument of that Consequence to the whole Kingdom, as this of a *publick Register* is.

I design therefore in a very few words to shew,

First, That his Arguments are advanc'd on Suppositions and Opinions in Law, which are in themselves either false and mistaken, or at least very broken and imperfect. And then,

Secondly, However they may be just, consider'd in themselves, yet they have another terrible defect in them; that they conclude little or nothing to the Purpose. And so, I take it, 'twill easily appear, that He's equally skill'd in Law and Logick.

I shall say little or nothing to what he says on his first Assertion, wherein he enu-

enumerates the ſeveral ways, whereby Lands may be *incumbred*; where, tho' one might have expected a perfect Catalogue, yet he has forgot ſeveral principal ſorts of Conveyances, and ſome of which, as will appear by and by, are very material ones to his purpoſe. But this being but a fault of his Memory, is the more Venial.

Nor will I take any great advantage of the Impropriety of the word *Incumbrance*, in the ſenſe He makes uſe of it, which, I think, properly imports ſome charge or burden upon the Eſtate of the Land, as a Rent, Condition, *&c.* And, I don't well underſtand, how a Feofment, Fine, *&c.* of Land, whereby the Eſtate is entirely and clearly tranſfer'd, can with any good ſenſe be ſaid an Incumbrance, when perhaps the Eſtate is as free from all Cloggs and Charges, in the hands of the Feoffee, *&c.* as 'twas before in that of the Feoffer.

I can't bur applaud the Author, and, I think, he deſerves the thanks of his Profeſſion for the diſcovery he has made to them, in the firſt Stanza of his ſecond Aſſertion, wherein he gives his Opinion, *that before* Magna Charta *Lands were given in Mortmain to Religious Houſes*, &c. And this ſhrewd Conjecture he fortifies with

a grave

a grave Saying, *viz. Becauſe human Prohibitions generally come after the Fact committed, whereas Laws divine prohibit by way of prevention*, which how far true and conſiſtent, I ſhall not ſpend time to examine, and only ſay, that if He had had the good luck to have conſulted *Glanvil, lib. 6. c. 17.* who wrote before *Magna Charta*, as well as obſerv'd the firſt words of the Statute it ſelf, *viz. De cætero*, &c. He might have ſaid this with a better aſſurance. But I muſt do the Gentleman ſo much right, as to declare once for all, that I have very little more of the Sin of Modeſty and Diffidence to lay to his charge.

And now he begins to take ſome pains, and to be pretty exact in tranſcribing my Lord *Coke*'s Hiſtory of *Mortmain*, which what it makes to the Queſtion of a Regiſter, He has not thought fit to inform us; unleſs it be, that it furniſhes him with abundant opportunity of detecting the Knavery of the Lawyers, in evading thoſe Statutes ſucceſſively: and therefore I ſhall not think my ſelf oblig'd to follow him ſo much out of the way, but ſhall immediately addreſs to what He ſays in his 9th, 10th, and 11th pages, which He intends to be the Baſis of his Argument.

And

And after having Remark'd the method that was taken to get out of the Statute of *Westm.* 2. by purchasing Lands in the names of other people to their use, in *p.* 9, He says, *In which Time they*, viz. the Lawyers, *had taught the Laiety this Craft, to convey away their legal Estates to persons in Trust*, &c. *of which King* Hen. 8. *complaining to his Judges*, they procur'd him the Statute of Uses.

As to which I have not much to quarrel at him for, unless it be the Imperfect account of things, *viz.* the Original of Uses, and the Reason of the making the Statute. Indeed I agree with him, that it was partly Fraud, and partly Fear, that first gave the occasion to the Invention of Uses in general; Fear, in the time of Intestine Commotions and Civil Wars, when Attainders were frequent, for the saving their Inheritances from being forfeited. For about the * time of *Edw.* 3d, when Uses are said first to be taken notice of,

* Tho' it may be well doubted, whether the Name and Thing, contrary to the receiv'd opinion, be not of a much older date from the Grant of King *Egbert*, King of *Kent*, about 400 years before the Conquest, of Landr in the Isle of *Tenet*, to an Abbess, where the words are, *possidendum* so much *suo usui*, &c. *Matth. Westm.* 155. L. *Bacon's Governm.* 4to Ed. 107. *Tyrrel's Gen. Hist.* l. 4, p. 193. *Lamb. Per.* 89.

of, and afterwards during the Troubles occaſion'd by the two Houſes of *York* and *Lancaſter*, the face of affairs changing often, it was dangerous to be found on the Couquer'd ſide, which might put the People on ſeeking out a way, whereby to lodge their Eſtates in ſome Fricnds, who probably were not concern'd in the Rebellion or Treaſon, for the preſervation of them for their Poſterity. And afterwards, I believe. they were continu'd chiefly by Fraud, to defeat Creditors of their Debts, and Remedies for them. Lords of their Wardſhips, Eſcheats, *&c.* And indeed, what made moſt People fond of them was, that before that Statute, Uſes were deviſable and diſpoſable by Will, which was a Privilege above Lands and Tenements; as appears by the Preamble of the Act, *&c.* All which is very evident from the many Statutes made concerning them. Tho' the Subtilty of the Nature of Uſes, and being, it may be, well improv'd by skilful managers, did ſtill over-reach the Policy and Providence of the Lawmakers, which occaſion'd their making the Statute thereby utterly to extirpate Uſes, by transferring and executing the Poſſeſſion, according to the limitation of the Uſe.

But

But be the Occasion of the making the Statute what it will, it *has*, it seems to this Author, *introduc'd a New Conveyance in the Law, (which was not before) by way of Bargain and Sale; for tho' a Bargain and Sale did raise a Use at the Common Law, yet it was not a Compleat Conveyance to transferr the Possession without an actual delivery of it in the Country; but now this Statute doing that office, by transferring the Use into a Possession, a Bargain and Sale became a Compleat Conveyance, without any other Ceremony.* Wherein, I think, He has sufficiently expos'd his Ignorance both of the Nature of a Bargain and Sale, and its Operation, before the Statute. For, if his Words are the Signs of his Thoughts and Conceptions, he means this; that, before the Statute, a Bargain and Sale raising an Use, if thereupon the Possession was deliver'd in the Country, it was a Compleat Conveyance to the Bargainee, and that the Statute, now transferring the Possession upon the execution of the Deed, does the office of that ceremony of delivery in the Country. Which I deny. It is true, a Bargain and Sale did raise an Use at Common-Law, so far I agree with him; but to talk of the delivery of the pos-

ſeſſion of the Land to the Bargainee, which ſhou'd compleat the Eſtate in him, is very weak and abſurd: for a Bargain and Sale operated to the Bargainee by way of raiſing an Uſe, or equitable Intereſt in him after this manner. The Bargainor, for a valuable and ſufficient Conſideration of Mony, *&c.* receiv'd of the Bargainee, declaring by his Deed, and by all the formal Words of ſuch an Inſtrument, his deſign and intent to convey his Eſtate to him, but ſtill after the execution thereof continuing the poſſeſſion of the Land, the Court of Chancery, who directed all things according to Equity and good Conſcience, and under whoſe ſole and immediate government all matters of Truſt and Uſes were, intending, that the Bargainee had paid the full value of the Eſtate, compell'd the performance of the Contract according to Equity, and the Intent of the Bargainor; and thence aecru'd to him that equitable intereſt and right to the Profits of the Eſtate, which is call'd an Uſe. And therefore it was, that if a man had bargain'd * and ſold his Land for Mony without mentioning the Heirs of the Bargainee,

* *Cok.* 1 *Rep.* 100. b. 87, b. 1. *Anderſ.* 35. *Hard.* 211.

gainee, yet the Bargainee in Equity had a Fee-ſimple in the Uſe of the Eſtate, becauſe it was preſum'd that the conſideration given was the worth of the Eſtate. But ſtill the Bargainee was but *ceſtui q' uſe*, as if a Feoffment had been made upon the Land to *A.* to the uſe of *B.* Nothing paſs'd out of the Bargainor in Law by the execution of the Deed, the whole legal Eſtate ſtill continued in him, and only an Uſe ariſing thence to the Bargainee, to which the Bargainor ſtood ſeis'd, as a Feoffee to Uſe.

Now, tho' by ſeveral Statutes there was Remedy given againſt the Pernor of the Profits, and to ſome purpoſes he was thereby accounted as Owner of the Land, yet he was ſo far from having any Eſtate in him, that if he enter'd upon the Land without leave of the Feoffee or Bargainor, he was a Treſpaſſer, and puniſhable as ſuch; and if 'twas with his permiſſion, yet ſtill he was but Tenant at ſufferance.

So that, I think, I need not labour this matter any more: 'tis evident enough how very unintelligibly (to uſe no harder terms) this Gentleman ſpeaks, and how groſly in the dark, when he

imagines the delivery of Poſſeſſion in the Country to the Bargainee, on the execution of the Deed, did what the execution of the poſſeſſion by the Statute without ſuch Ceremony does now; whereas, at this day, the Bargainee or *ceſtui q'uſe* has the Eſtate of the Land in him in the ſame degree, as the Feoffee or Bargainor had before, and in as full a manner in Law, as himſelf had the Uſe in Equity.

I agree well enough with him in the reſidue of that Paragraph, *viz.* that now, ſince the Statute of Uſes, a Bargain and Sale being a compleat Conveyance without any other Ceremony, leaſt this new Conveyance ſhould give occaſion for ſecret and clandeſtine Settlements, which was the chief thing the makers of that Act deſign'd to prevent, they did the ſame Seſſion enact the Statute of Enrolments.

But now comes the Maſter-ſtroke; Both theſe Statutes together had made ſufficient proviſion againſt all private Settlements and Incumbrances, had it not been for the Knavery of the Lawyers, who, as the Charge againſt them runs,

runs, *of late years have top'd their Inventions upon these two Statutes: for, first, they make a Bargain and Sale for a Year, which is not within the Statute of Enrolments, and by this the Lessee gains a Use at Common-Law, and a Possession by the Statute of Uses, which makes him capable of taking a Release of the Reversion at Common-Law, which they make accordingly, which two Deeds make one perfect Conveyance, and so by putting the Common-Law at both ends, and the Statute in the middle, the Statute of Enrolments is bilk'd,* and this introducing of clandestine Conveyancos is laid to be, *by the Abuse of one Statute, and the Elusion of the other.*

But I desire a little to apply the two parts of the Accusation. Here are two Statutes concern'd, the one is abus'd, and the other oluded; I will suppose the Author to speak Grammatically, and that he intends the Statute of Uses is what suffers under the Abuse by this new sort of Conveyance: But how, pray? Has not that Statute its full operation, notwithstanding this Devise? Nay, unless it so had, the Trick cou'd not take. As there is no doubt, but a

Bar-

Bargain and Sale for a Term is within both the Letter and Meaning of the Act, ſo doth not He himſelf confeſs it ſo to be? Nor is it to be imagin'd, but that the makers of the Law, as they knew the event of executing the Poſſeſſion to the Uſe, ſo they did eaſily foreſee, that ſuch Bargainor might releaſe to the Bargainee ſo being in poſſeſſion by vertue of the Act. If there had been a Leaſe at Common-Law for a Year, and the Leſſee had enter'd, and then the Leſſeor had releas'd to the Leſſee and his Heirs, that was a known and common Conveyance. And is it not the ſame thing, now the Statute has executed the poſſeſſion to the Leſſee, as if he had actually enter'd before Statute? So that I cannot apprehend how by any part or the whole of this Conveyance there is the leaſt Abuſe put upon the deſign of this Statute, it having its effectual operation to all the Intents of it.

And it is not material here, at what Time, nor upon what Occaſion, theſe Bargains and Sales for a Year began to come in uſe, (tho' that will appear

pear anon) for let them come in, when and how they will, the Statute is not defeated thereby of the effect of any of its Provisions or Designs.

But however the Statute of Enrolment is *bilk'd and eluded*, and therefore if the Lawyers are found guilty of any one part of their Charge, they must most expect to come off clear. But pray hold a little? What is there in this Conveyance, that can with any propriety and tolerable good sense be call'd an Elusion of the Statute? I think a Law is then said to be eluded, when by some cunning Device or Artifice a Case is construed out of it, which is besides the Intention and Design of the Makers; but sure there is no room for any such Calumny here. The Makers have expressly mention'd the Cases on which they intended their Law should take effect; the words are, *whereby any Estate of Freehold or Inheritance shall be made*, and the subsequent words, *or any Use thereof shall be made*, most palpably referr to the foregoing Particulars of a Freehold or Inheritance. Now to imagin, that that Parliament de-

design'd to include Bargains and Sales for a Year, or any Term, which He muſt do, if He will make this an Eluſion of the Statute, is to ſuppoſe one of theſe things, either that the Law-makers knew not the real difference between the one and the other; or elſe, that they thought that a term for Years was included within the words of Freehold and Inheritaece; as. *Omne majus continet in ſe minus.* But both theſe, I conceive, are too groſs to be believ'd.

I wonder, while his hand was in, this Gentleman had not told us of ſome other Eluſions out of the Statute of Uſes likewiſe, which might have conduc'd to the aggravating the Charge. I'll beg leave to put him a Caſe or two, and deſire his Thoughts of it againſt the next time. *A*, poſſeſs'd of a term of Forty Years, bargains and ſells for a Year to *B*, and then immediately releaſes to him for Nineteen Years, what operation has that Leaſe and Releaſe? Or, again; *A*, ſeis'd of Land in Fee-ſimple, makes a Leaſe at Common-Law, or a Grant, or Forty

Years

Years to *B*, for the uſe of *C*, and preſently after releaſes to *C*, how does this enure to *C*?

No doubt of it, but if this had lain in this Author's way, 'twould have made another Article of Impeachment againſt the Lawyers.

But however, tho' I am not ſatisfied to believe with the Author, that a Leaſe and Releaſe is an Abuſe or Eluſion of either of the Statutes, yet I'll give him an Inſtance which may be with a better propriety and more truth ſaid ſo to be, and which, I am of opinion, was originally a Deviſe of the practiſing Conveyances, to avoid the Statute of Enrolments; I mean, the Conveyance by way of Covenant to ſtand ſeis'd; which, by the way, this Gentleman, if he ever heard of it, ſeems utterly to have forgot, for he has not mention'd it either in his Catalogue, or any where elſe, throughout his Book. It does truly appear to me from divers Branches of the Statute of Uſes, that the Parliament did not expect, that Uſes ſhould have been rais'd,

and the Poſſeſſion thereon executed, by any other Conveyance beſides this of a Bargain and Sale, which being known and receiv'd before the making the Statute, they thought neceſſary to continue, for they intended utterly to extirpate and extinguiſh all Uſes, but only in caſes of Bargains and Sales. They likewiſe imagin'd, that little Land would paſs by this way of Bargain and Sale, becauſe the Bargainee being in the Poſt, ſhall never vouch by force of any Warranty annexed to the Eſtate of the Land; and therefore it was, that leſt this allowance to Bargains and Sales, whereby there was a compleat Conveyance of the Eſtate, ſhould give occaſion to ſecret Settlements, which were the Inſtruments of Fraud, *&c.* In the ſame Parliament they provided for the Enrolment of them. Now, 'tis not to be ſuppos'd, but if they had known of any ſuch Conveyance, as this of a Covenant to ſtand ſeis'd, or could by any Notice or Intimation have foreſeen, that it would have ariſen in contradiction to the purpoſe of their Law, that they would not at the ſame time, and with the

ſame

ſame pains, have provided againſt that likewiſe. And this is not wholly my own Notion, for the Reader may find it touch'd and hinted at in *Chudleigh*'s Caſe. 'Tis likewiſe evident to any one, who has but a little obſerv'd the Courſe of Conveyancing, from the Reports of Caſes in our Books, that ſome time after the Statutes of Uſes and Enrolments, moſt Settlements were by way of Covenant to ſtand ſeiz'd which, being a New Conveyance, and not well ripen'd and ſetl'd, there grew a great many Queſtions and Uncertainties thereon, concerning the ſufficiency and extent of the Conſiderations, and other matters, which put them on conſideration of the Statutes, out of which they form'd this Conveyance by way of Leaſe and Releaſe; which was yet in Embryo, till my Lord *Rolles*'s time.

I beg the Reader's pardon for this Digreſſion, wherein I have inſerted my own Thoughts on this matter, which, if they are juſt, might perhaps have been more to the purpoſe than what the Author has endeavour'd to make

out, and do at leaſt prove the Impotence of the Man, when he attempts matters above his reach, and engages in a Law-Controverſie, *without the Advice and Aſſiſtance of Councel learned.*

And now I am come to accept of the *Chalenge made to the Inns of Court*, (of one of which I profeſs my ſelf to be a Member) *to ſhew, that either the Common-Law, or any Parliaments of* England, *ever directed any Incumbrance to affect Lands, but by ſolemn Livery and Seiſin, or matter of Record; and therefore*, &c. Where, tho' by the oddneſs of the Expreſſion, had I not by this time pretty well learn'd his Language, I ſhould again be tempted to think, he meant thoſe Charges, as Rents and Conditions, which do properly encumber an Eſtate, but yet are collateral to the Title of the Land: yet I take his meaning to be, That neither by the Common Law, nor by any Act of Parliament, was there allowance given to any Conveyance of Land, which was not to be perfected either by ſolemn

lemn Livery and Seiſin, or by ſome-what that did appear on Record.

As to which, (1.) I ſhall mention the very Preamble of the Statute of Uſes, which ſays, that " *whereas by the* " *Common-Law of this Realm, Lands,* &c. " *were not deviſable by Teſtament, but by* " *ſolemn Livery and Seiſin, matter of Re-* " *cord, Writing ſufficient made* bonâ fide, " *without Covin or Fraud,* yet, *&c.*

It has been always allow'd, that the Preambles of Acts of Parliament, eſpecially where they are introductive of new Laws, are the beſt Interpreters of what the Law was before the Statute, becauſe they contain the Foundation and Reaſons on which the Makers of the Law mov'd, when they made ſuch alteration.

Now I think it is very clear from this Preamble, that the Common-Law knew other ways of transferring the Titles of Lands and Tenements, beſides thoſe which operated by ſolemn Livery, and Seiſin, and matter of Record, *viz.* by Writing only, as Deed

or

or otherwiſe, or elſe it had been impertinent and vain to have mention'd that as another Species which the old Law approv'd of. But,

Secondly, To deſcend to Particulars. I need be at no further pains, than turning back two or three leaves of the Author's own Book, where, in his Catalogue of Conveyances, he has furniſh'd me with enough to convince himſelf of groſs Ignorance and Contradiction.

But firſt I will premiſe, that when he ſays ſolemn Livery and Seiſin, I ought to take him in the ſame ſenſe that other Lawyers uſe that term, *viz.* for that Ceremony uſed upon the Land in the view of the Country, at the Tranſmutation of the poſſeſſion of any Freehold of Lands, the deſign of which, it is true, was to prevent the uncertainty of the Freehold, it becoming notorious by this means, in whom it reſted; any Perſon, who had any Claim or Demands thereon, might have notice where to have recourſe for his Remedy. But if it is this He means, what

what is become of all Conveyances of such Things and Estates, which lye in Grant, and not in Livery, and yet are transferrable from one to another without matter of Record, as Grants of Reversions, Leases for Years, Rents, *&c.*

But, to come at his meaning, I will allow for impropriety of Speech, which yet is scarcely tolerable, where the terms made use of are *vocabula Artis*, and suppose, that by Livery and Seisin he intends some publick notorious Act, which is requir'd to the completion of all Conveyances, that did affect Land, as Attornment to the Grant of a Reversion; which yet is as different in its nature from Livery and Seisin as Opposites can well be, one being the Act of the Feoffor, the other the Consent of the particular Tenant, in pursuance of an Act done by the Grantee, *viz.* Notice of the Grant of the Estate, tho' indeed the Design may be the same in both.

But

But even in this very large ſenſe of his words, his Aſſertion is miſerably falſe and miſtaken; for ſurely there are Conveyances by the Common-Law made uſe of at this day, to which a Deed only is ſufficient, and ſometimes Words without a Deed, and this without any further Circumſtance or Ceremony. I will inſtance ſhortly in a few.

(1.) A Leaſe for Years of Land, where, tho' it be a Leaſe for a Thouſand Years, yet immediately upon the execution of the Deed of Leaſe, the Intereſt of the Term paſſeth, and is veſted in the Leſſee before any other Act, as Entry by him: and therefore it is, that if the Leſſor dies before Entry made, yet the Leſſee may enter afterwards. And theſe are *Littleton*'s Words, *Sect.* 66. And ſo, on the contrary, if the Leſſee dieth before he hath enter'd, yet his Executors or Adminiſtrators may enter, and before entry his Intereſt is grantable over by him, which proves it not to be a thing purely in action, which wanted poſſeſſio

sion to the perfecting of it. Indeed to some few purposes, to which an actual possession of the Land is requisite, He is not accounted Tenant, till he does enter.

Secondly, A Devise of Land, which is a Conveyance introduc'd by a Statute, which was not known at Common-Law, * at least not since the Conquest, tho' it operates according to the Common-Law, where the Devisee may enter immediately after the death of the Devisor; and there is nothing requir'd by the Law to make his Title notorious and publick, it being not to be prov'd. Nay, before the Statute of 32 *Hen.* VIII, *c.* 2, in many Cities and Boroughs there was a Custom to devise Lands and Tenements by Will, which Customs were allow'd and approv'd of by the Law, but yet no Custom to enroll them, or any other publick Ceremony, that was tantamount.

* For before the introduction of Feuds by the Conqueror, what was then call'd *Thane-land* was devisable by Will, and that without License from any. *Reliq. Spelm.* 21, 22. *Bacons Gov.* 108, 109. *Selden. jur. Testam.* p. 5, 6. *Tyrrel. Introd.* p. 122.

Which may ſerve particularly for an Anſwer to what He ſays, in the ſame place, that *ſuch clandeſtine Conveyances are crept in, contrary to all the Avowed Laws and Cuſtoms of the Kingdom.*

Thirdly, A Grant of a Rent-charge by a Tenant in Fee-ſimple, where immediately, upon the delivery and execution of the Deed of Grant, the Grantee has a perfect Title to the Rent: Indeed, if it be a Grant of a Freehold in the Rent, Seiſin is requiſite, to enable the Grantee to bring an Aſſiſe; but without it he may diſtrein; and if it be but a Grant of a Term in the Rent, he has an Action of Debt, before he has ever had poſſeſſion thereof.

Fourthly, A Releaſe to a Diſſeiſor, where the whole Right to the Eſtate is convey'd away by the execution of the Deed, which, tho' it inures by way of extinguiſhment, yet operating on the Poſſeſſion and Eſtate, which the Diſſeiſor had gain'd by his entry, is a perfect Conveyance of the Eſtate.

Fifth-

Fifthly, A Surrender, by which preſently upon the execution thereof and aſſent by the Surrendree, the Freehold is transferrable to him in Reverſion or Remainder; and this in ſo private a manner, as that the Surrendror may continue his poſſeſſion at the time, and afterwards. Nay, it has been a Queſtion on this Conveyance, whether by the very ſealing of the Deed of Surrender by a Tenant for Life, the Eſtate immediately paſſed to the Remainder-man before his Aſſent and Agreement; and, as the Judgment now ſtands, the Law is in the Affirmative. So far is it from requiring any publick Act, to which the World may be witneſs, that it has been adjudg'd not neceſſary to the transferring the Title, that He that is to take it, expreſs his Aſſent; but that ſhall be intended, being for his Advantage. Which is prov'd further, by the form of pleading a Surrender, where, in all Actions which go in Affirmance of the Surrender, it is only ſaid, that He ſurrender'd, without ſetting forth the Agreement or Acceptance thereof.

Which may ſerve particularly for an Anſwer to what He ſays, in the ſame place, that *ſuch clandeſtine Conveyances are crept in, contrary to all the Avowed Laws and Cuſtoms of the Kingdom.*

Thirdly, A Grant of a Rent-charge by a Tenant in Fee-ſimple, where immediately, upon the delivery and execution of the Deed of Grant, the Grantee has a perfect Title to the Rent: Indeed, if it be a Grant of a Freehold in the Rent, Seiſin is requiſite, to enable the Grantee to bring an Aſſiſe; but without it he may diſtrein; and if it be but a Grant of a Term in the Rent, he has an Action of Debt, before he has ever had poſſeſſion thereof.

Fourthly, A Releaſe to a Diſſeiſor, where the whole Right to the Eſtate is convey'd away by the execution of the Deed, which, tho' it inures by way of extinguiſhment, yet operating on the Poſſeſſion and Eſtate, which the Diſſeiſor had gain'd by his entry, is a perfect Conveyance of the Eſtate.

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And ſo 'tis in ſeveral other Caſes, when a Conveyance is executed on the part of the Grantor, if there is Capacity in the Grantee, the Law will veſt it in him, without ſo much as notice thereof given to him.

I think 'tis needleſs to add any more on this point, tho' there are ſeveral other Inſtances might be given in confutation of his Doctrine; as an Exchange, to which indeed there is Entry requiſite to its execution, becauſe there muſt be a Reciprocal Grant; but nothing more notorious. So likewiſe are all Deeds of Revocation and Declarations of new Uſes of Eſtates, whereby the Title of Lands is chang'd and alter'd, Confirmations, *&c.*

By all theſe Inſtances, among others, I hope, it ſufficiently appears, that Lands are to be incumbred and affected by many ways allowable by the Law, both Common and Statute, without any publick Act, ſuch as Livery and Seiſin, *&c.*

And tho' to all Conveyances there is assent requir'd, yet that is not to be compar'd with such Collateral Acts and Circumstances, which by the Positive Law are made the effectual parts of a Conveyance, as Livery, Attornment, &c.

And, to conclude this Point, I will mention the Authority of my Lord *Coke*, 1 *Inst.* 50. a, whose Word, I believe, will be taken by this Gentleman, because I find him more than once appeal'd to by himself in his Book.

And truly this is Doctrine so plain and easie, that nothing could have provok'd me to so tedious a Repetition of it, but the Itch of exposing so egregious a mixture of Impudence and Ignorance.

There is but One place more in his Book, which I shall take notice of, to this purpose, and that is Page 13, where he

he begins to prove his Third Assertion with these Words, *viz.*

Some Notice is essentially necessary to the Title of every thing that is vendible. To make a Title, is to take the Property of a Thing from one Man, and put it into another; of which it is necessary that either Persons should have notice, as well as the Parties, or else the Purchaser can have no Title, because there is no Witness to give evidence of it, in case the Seller should deny it.

Which, I think, is equally incongruous with his former Notion of this matter. For, besides his definition of Title, which is a little peculiar, and very much different from the true legal signification of it given by my Lord *Coke*, 1 *Inst.* 345, b. And besides the Instances I have already given, of Conveyances of Lands, to which there is no degree of Notoriety requir'd, in some

not

not even to the Vendee himſelf, and much leſs to all other Perſons, as he fancies: I will ſhew in a very few words, that this holds not only in Conveyances, but likewiſe in Gifts of Goods, and making Title to them: For, in caſe of a Gift of Goods and Chattels, if the Deed be deliver'd to the uſe of the Donee, the Goods are in him preſently before notice or agreement, tho' by his diſagreement and refuſal afterwards the Property ſhall be diveſted. 3 *Coke* 26, b. *Dyer*, 49, *&c.* And ſo, in caſe of things in Action, a Bond is ſeal'd and deliver'd to a Man's uſe, who dies before notice, his Executors may bring an Action. Which, I conceive, undeniably proves, that the Contrary to his Aſſertion is true, That to give a Property, *it is not neceſſary, that there be Notice to other perſons, as well as the Parties.*

Theſe are all the Obſervations I ſhall make on thoſe Matters of Law which He has brought in, and made the Pillars of his Argument, which being either ſhaken or wholly taken away, I'm afraid, the Superſtructure, without much

much pains, will become ruinous and tottering. But, whether my Thoughts are juſt, or no, I appeal to the learned in the Law, who upon firſt ſight will be able to determine the Controverſie.

I ſhall now a little examine the force of his Reaſonings, and ſee how far what He has alledg'd in proof of the *Neceſſity of a Regiſtry* concludes to it. And, I hope, by this time the Reader is prepar'd not to be ſo unreaſonable, as to expect any very ſtrict Syllogizings from a Perſon of that depth and ſagacity as, I think, the Author appears to be, even in his own Profeſſion; for, 'tis very natural that his Concluſions ſhould be lame and halting, coming after ſuch maim'd Premiſes.

I will collect the Summ of his Arguments, and ſtare them in their full force and ſtrength.

And, for Method's ſake, I think, all He has ſaid is reducible to theſe three Topicks; either,

Firſt,

First, Positive Arguments drawn from the present state of Conveyancing, for proof of the Necessity and Conveniency of a Registry; which are his first and second Assertions, and in some degree his fifth.

Secondly, Some Objections both made and answer'd by the Author, against his own Scheme and Model in the third and fourth Assertion. Or,

Thirdly, Some prudential Considerations, for the better accommodating his Proposal to Use and Practise; as in his last Assertion.

And on the *First* Head his Argument stands thus: In Page 3, he says, *That the allowance the Law gives to so many sorts of Incumbrances to be done in diverse places, doth render the Titles to Lands uncertain, and therefore is a Deficiency in the Law.* Now

The Mischief which he intends to be the Consequence of this permission of incumbring Lands in different places, I

apprehend to be this, *viz.* the Deceit that is often put upon Purchaſers and Creditors by ſecret Settlements and Conveyances; for I don't know how the bare making or executing of Incumbrances in different places renders Titles uncertain by any other means. And, I ſuppoſe, 'tis the Deſign of the Author to be ſo underſtood, becauſe he ſays in the ſame place, that the Recording of ſome of theſe Incumbrances doth not Remedy the Incertainty, *becauſe thoſe that are on record have no preference to thoſe which are not; ſo that ſhould a Purchaſer diſcover all that are Recorded, he may be defeated by thoſe that are not which can never be diſcover'd, but by the Confeſſion of them that made them, becauſe they may be executed any where.*

So that, it being the Uncertainty of Titles that the Author deſigns to prevent for the future, which Uncertainty is now occaſion'd by private Incumbrances, this Miſchief can, by his own confeſſion, never ariſe or take place in any Caſe, but where ſuch clandeſtine Securities can be made.

The

Then in his ſecond Aſſertion, where he comes to particularize the Methods of private Conveyancing, He ſays, *that the Advantage taken by the Conveyancers in the Law of the Statute of Uſes, in making clandeſtine Conveyances contrary to the True Intent and Meaning of that Parliament, and all the Avowed Laws and Cuſtoms of* England, *doth occaſion a Neceſſity of a Regiſtry.* And theſe clandeſtine Settlements, in his Proof of his Aſſertion, he fixes to be thoſe made by way of Leaſe and Releaſe, which He endeavours to prove to be an Abuſe and Eluſion of the Statute.

Then in that bold Aſſertion he has flung in, (to uſe his own Words on a former like occaſion) in Page 11, he defies the whole Camp of the Lawyers, to ſhew him any Incumbrance to affect Lands allow'd either by Common-Law or Statute, which was not by ſolemn Livery and Seiſin, or Matter of Record; and therefore theſe clandeſtine Conveyances, *viz.* Leaſe and Releaſe, are crept in contrary, *&c.*

This being the Substance of his Argument, I think, it is most plain, that if they are secret Settlements, which, according to him, rendering Titles uncertain, occasion the Necessity of a Registry to make them publick: and there are, if his Assertion be true, no such private Incumbrances, but what the Lawyers have top'd upon the Statute of Uses, *viz.* by Lease and Release: Then all he says is reduc'd to this single point, that, to remedy the Inconvenience introduc'd by the Conveyance of Lease and Release, it is *necessary and convenient*, that the Parliament of *England* do establish a publick Universal Registry for all Titles of Lands; and this by the enrolling of all Conveyances, of what kind soever, as well those which are in their Constitution notorious as others, for so is the Form of his Bill.

Now this Argument, drawn from the Invention of a Lease and Release by the Lawyers, has this Misfortune in it; that if his Observation were in Fact true, *viz.* that it were an Abuse and Elusion

of

of the Statutes, yet, I think, 'twill hardly prove (1ſt) the Neceſſity of a Regiſtry, if there can be any other way ſhewn, whereby this Defect in the Law can be ſupply'd.

And I can ſcarcely imagine any thing more obvious than this is, even from this Gentleman's own Poſitions.

For if neither Common nor Statute-Law directs (according to him) any other Conveyance, beſide theſe, that work by Livery and Seiſin, or are Matter of Record; and if the deſign of the Statute of Enrolments was to prevent the Miſchief that might be occaſion'd by the transferring the Poſſeſſion to the uſe by the Statute of Uſes, by enrolling all ſuch Conveyances to uſe (which proviſion of the Parliament I don't find but the Author doth approve, as Wiſe and Prudent). If this be the only Eluſion of the Statute, whereby clandeſtine Settlements are let in, contrary to its meaning and intention, then what Conſequence can be more clear than this; That if the preſent Parliament ſhall think fit to ſupply the deficiency

of

of that Law of Enrolments; if they ſhould add a ſhort Clauſe, to oblige the Enrolling of Bargains and Sales for terms of Years, as well as Freeholds, and thereby ſtop up that Loop-hole, whereby the Lawyers have *crept* out of that Statute, there is an end of this Argument for the Neceſſity of Regiſtry for that purpoſe. If that Law had been effectual, had it not been for this Device of the Lawyers; if there could have been no reaſon to complain of private Settlements, and ſo no occaſion for a Regiſtry, had not the Judges and Practiſers of the Law outwitted the Law-makers; ſurely 'tis in the power of the ſame Legiſlature to prevent it for the future, and make the former Law effective to the End 'twas deſign'd, eſpecially where the Miſchief is ſo plain, ſingle, and particular as it appears to be, by the Repreſentation this Author has given of it.

Nor is His Argument leſs frivolous in the other Branch of its Deſign, I mean, the Proof of the Conveniency of His Regiſtry.

For

For certainly it is enough to convince any unprejudic'd Reader of the Falſeneſs of this part of his Suppoſition too, if an eaſier, ſafer, and cheaper Method can be propos'd to attain the ſame End. And if what I have above mention'd does the ſame Office, as I think it will, for ought appears in this Gentleman's Argument to the contrary; then, I imagine, 'twill be eaſily granted, (1) to be much leſs difficult and laborious a little to enlarge the purview of a Law already in being, grown familiar by a long practiſe under it, render'd eaſie and feaſible by a good experience of its effect, already ſeen and known, than 'tis to form a quite new Model of much greater extent, and out of purely freſh Materials, and that too projected on a Policy hitherto always rejected by our Forefathers, utterly eſtranged to our Conſtitution, and where the practiſe of it on neceſſity, for ſome time, muſt prove perplexed and incommodious, and not to be reconcil'd to familiar uſe, but by a conſiderable experience to come. (2.) By many degrees ſafer, where the Way is beaten and known,

known, the Course smooth and obvious, and the Effects already in view and prospect, than to seek out untrodden, unaccustom'd paths, divert things out of their old Channel, and the Results and Consequences not to be foreseen: And then (3.) without question less chargeable and expensive, where the Officers and Ministers are already known, the Fees and Charges settl'd and fix'd; than to erect an additional Office, where the Opportunities for Extortion and Oppression may be greater, and more numerous.

And if this be so, surely a little light will be sufficient to discover, on which side the Balance of Conveniency lies.

But besides the apparent Inconclusiveness of his Argument, there is a very great Absurdity in the application of it to the necessity of a Registry, which is not unlike that of a Quack-Doctor or Chyrurgeon, who, if the Distemper or Wound lye very open and visible, can give a tolerable guess at the name and kind of the Medicine; but the one, out of the abundance of his

his Knowledge, preſcribes a quadruple proportion, where a ſingle one would ſuffice; and t'other, to ſhew his Liberality to his Patient, ſpreads him a Plaiſter ſix times broader than the Sore. So, truly, this Gentleman, who would fain be *a Phyſician to the Commonwealth*, and ſets up for a Reformer of Laws, and has convinc'd us, even by demonſtration, that there are both Quacks and Empericks in Law and Policy too, he's for promoting His Trade in like manner: and therefore we find, that tho' in his whole Diſcourſe there is not a word of Quarrel againſt thoſe Conveyances, that are perfected by ſolemn Livery and Seiſin, and no juſt Complaint againſt thoſe that appear on Record, but, on the contrary, they are put as Inſtances of the Purity and Perfection of the Common-Law, and made the Rule and Standard, by which theſe ſpurious and degenerate ones are judg'd and condemn'd: yet in the form of his Bill, Deeds of darkneſs and Deeds of light, All ſuffer in the like Condemnation; the righteous and unrighteous, clean and unclean, both want the ſame Cure, being equally dangerous, muſt

bear the ſame Fetters, and dragg the ſame Chain.

If this Gentleman would have dealt fairly with the World, without ſuſpicion either of Weakneſs or Mean Deſign, he ſhould have made his Remedy commenſurate to the Miſchief he had diſcover'd. Or if in his Opinion all equally want to be reform'd, He would have done well to have told us why, and thereby deliver'd himſelf from the Imputation of Inconſiſtency and Contradiction, and ſuffer'd the reſt of Mankind to Judge, as well as himſelf, for otherwiſe we are well aſſur'd, that *'tis not the Whole that need a Phyſician, but thoſe that are ſick.*

And if by what is already ſaid the Author's Argument ſavours not a little both of Impertinence and Abſurdity, I have done what I deſign'd; for tho' it relates immediately to but a ſmall part of his Diſcourſe, yet, I think, it gives a ſufficient Anſwer to the all of his Argument, which in any ſort touches the Queſtion, and on which his whole Book depends. For, as to what he ſays in his fifth

fifth Assertion, that *the Assurance of Title, and the dispatch of Business by this Registry, will be more than Equivalent to all the Charge in Registring the Incumbrances, and that tho' this Registry should be an additional Charge to all others, yet the Privilege of it will be worth the Price.* I believe, the most hearty opposers of a Registry, if they were convinc'd by the strength of his Reasons, or others, of the Usefulness and Necessity of it, would unanimously agree with him in this matter; for, no doubt, if the Certainty of Title be so valuable a quality of it, and the Security from Vexation and Suits be so universally desirable, and the erecting of a Registry be the only way to attain that Haven of Safety and Rest, few Men in their Wits will grudge the expence, tho' it should prove a little extraordinary and unusual. But, on the other hand, if he has not before convinc'd the World of that Necessity and Advantage of his Registry, but notwithstanding all his pains there appears a nearer way than what he has cut out, I think, the same Common Prudence will direct Men in their choice of the latter, and save their Money in their Pockets; and then, I don't

ſee what great Service this does to his Cauſe.

And this is all I can find in his Book which has any thing of Argument in it directly to the proof of his Point.

Then as to the Objections he has formed againſt his own Regiſtry, for my part, I muſt agree with him in the main, that he has ſufficiently Anſwer'd 'em. For (1*ſt*) I ſhall moſt readily grant what has coſt the Author ſo much of his Pains and Learning to prove, that *the more Notice, the better is the Title*; *that as Notice is advantageous to Title, ſo in the Hiſtory of Conveyancing the moſt perfect Titles are the moſt Notorious*; *or rather, the moſt notorious are the moſt perfect*. And this He might have illuſtrated, if it were ever matter of doubt to any, by Inſtances much nearer home, and to his purpoſe likewiſe, than thoſe he has brought from the Old and New Teſtament; for I agree, that the ancient way of conveyancing in this Kingdom was in the view of the whole Country, who ſaw the tranſmutation of Poſſeſſion, and therefore was preferr'd before all ſecret ones.

And

And for this reaſon a Feoffment upon the Land, which is the moſt notorious, doth at this day * exceed all other Conveyances, and is more reſpected in Law; for this perfection of it. And though there are ſome Objections drawn, I think, rather from Politicks than Law, [which if this Author had ſtated, and given a clear Anſwer to, He needed not have made thoſe irregular and bold Sallies, for want of ſomewhat pertinent to his Aſſertion, and might have exercis'd the gallantry of his Wit to better purpoſe] againſt the too-naked *Diſcovery of Titles*, which ſome imagine may prove inconvenient, and of ill conſequence, for Reaſons of State: yet, I confeſs, I am not perſwaded thereby of the Danger of a Regiſtry; and had the Author's Argument brought with it as much light and conviction to my Underſtanding, as there is of the contrary in this fancied Objection, I ſhould have ſav'd my pains at this time, and rely'd upon his Ability to give the World ſatisfaction in that matter.

As to his fourth Aſſertion, wherein he anſwers an Objection which, I dare ſay, was

* *Cok. Lit.* 49, a.

never made before, *viz.* that *all Objections made against a Regiſtry, upon account of reducing the practiſe of the Law, are one good Reaſon for it*; I ſhall likewiſe be of his opinion. His diviſion of that part of the Law, as it is the Subject of Practiſe, is juſt enough; and I agree with him, that *the Errors and Uncertainties in Conveying of Titles* doth beget a great part of the Controverſies in *Weſtminſter-hall*; but that man muſt be very little acquainted with that place, and the nature of buſineſs, who thinks that *the Titles of Lands may be made certain by a Regiſtry, and no otherwiſe*; for, beſides that, the Author has not yet given us any infallible aſſurance, but that the End of his Regiſtry may be attain'd without it: There are ſtill, and will certainly ever be, Cauſes of Incertainty in matters of Title, which a Regiſtry of Conveyances can never remove, which will ſtill have the ſame pernicious effect notwithſtanding that, ſuch as the Ignorance and Diſhoneſty of thoſe who have the tranſacting ſuch matters, againſt which I find no Security or Proviſion in all Mr. *Aſgill's* Model for a Regiſtry; and, I doubt, he muſt be at the expence of another Eſſay at leaſt, before he will remedy this

this greater *Deficiency in the Lawyers*. And I think it needleſs to ſay what a great diſparity there is in the Number of Queſtions on Incertainties of Titles ariſing from this Cauſe among others, in compariſon of thoſe from clandeſtine Settlements, againſt which there are ſeveral Laws in being, which are in a great meaſure effective of their deſign.

However, if it does in any degree contribute to the reducing the uncertainty of Property, it is not to be rejected without good reaſon; and tho' I'm afraid, if it be eſtabliſh'd, 'twill be far from abating the Profit of the Law by leſſening the number of Queſtions and Diſputes, yet ſo far I agree with him, that if it ſhould be ſo in fact, that can make no Objection againſt it, but on the contrary, *is a very good Reaſon for it*. For I can never imagine, but that, as all Profeſſions and Ranks of Men were originally inſtituted for the good of Society and Government, and to ſerve the ſeveral Exigencies of Communities, ſo they can never have any True Intereſt of their own ſeparate from the real advantage of the Publick, and more eſpecially that of the Law, which is and

ought

ought to be the great inſtrument and means of the Peoples Good, as it is their only Fence and Security in the enjoyment of their Properties in peace and ſafety. And however it may be the private Regret of ſome Profeſſors thereof, who therefore deſerve to be ſpew'd out of all Civil Society, and to be cut off from all the Benefits and Privileges of Government, yet, I dare ſay, 'tis no ſmall number of them, who would rejoice to ſee Love and Honeſty more abound, tho' it were to the abridging the profit of their own Employments.

As to the Author's ſixth and laſt Aſſertion, *viz. That it is more practical and leſs troubleſome to ſettle it in the Metropolis, than to diſpoſe it into the ſeveral Counties.* I am not concern'd to examine, whether his Opinion be good, or not, ſince it were to allow the *neceſſity of a Regiſtry*; which, I think, he has not yet prov'd. But ſuppoſing that be done, I ſhould be inclin'd to believe the contrary more adviſable, both from the nature of the thing, ſince it muſt certainly be a great trouble and charge, as well as danger, to ſend, much more for the Parties themſelves to bring,

all

all Conveyances hither to be acknowledg'd and regiſter'd; where, tho', 'tis true, the moſt conſiderable Purchaſes are tranſacted, yet by far the leſs number; and likewiſe from the Policy of the Makers of the Statute of Enrolments, who deſigning much the ſame thing for their Bargains and Sales, yet thought beſt to allow a liberty to enroll in the Country. And tho', as the Author ſays, *'tis obſervable, that the Statute for Enrolment giving liberty to enter Deeds in either of the four Courts at* Weſtminſter, *or in the County where the Lands lye*, the latter *is ſeldom us'd*; yet let me add this Obſervation to it, That the reaſon is, becauſe Bargains and Sales enrollable by that Statute are ſeldom made at all, ſince the frequent uſe of Leaſe and Releaſe; and when they are us'd, 'tis for ſome ſpecial reaſon, in uncommon Caſes, which are moſt likely to be tranſacted here: And had that Act extended to all Bargains and Sales, I queſtion not, but the Fact would have been otherwiſe. But himſelf not being very poſitive in this matter, there is no great Variance between us.

And now I have gone through the two Branches of my Deſign, with what Succeſs the World may judge. And I deſire the Reader to take notice, that what I have ſaid muſt be underſtood to be in Anſwer to Mr. *Aſgill*, and in confutation of his Hypotheſis: and tho', perhaps, there may be found ſome things in it not impertinent to the Argument of a Regiſtry in general, yet they muſt be taken to be level'd purely and ſingly againſt the Author's Book; and if it ſuffices for an Anſwer to that, it reaches its End.

But ſtill there are two conſiderable parts of this Authors Eſſay, which I have not yet particularly apply'd my ſelf to, and theſe may be ranked under the general Titles of *Wit* and *Malice*: With both theſe he has ſtrew'd his Diſcourſe, deſigning thereby to give a reliſh and picquency to the Whole. It ſeems this Gentleman has conceiv'd an immortal Enmity againſt the Prieſthood in general, for indeed he has gone a great deal out of his way, and taken moſt learned pains to give the World ſome Inſtances of Prieſtcraft, and to be ſerviceable to the diſcovery of ſome Religious Jugles and

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Pious Frauds; and becauſe he will do the buſineſs effectually, he has back'd his Remarks with Scripture-Proofs; and thus he triumphs, by turning their own Weapons againſt themſelves; and a little enlargement on ſo pleaſing and luſcious a Subject, he hopes, may advance his Deſign of a Regiſtry: but that venerable Body of Men are ſufficiently ſecur'd from Injury, by ſuch hands as his, and they wiſely know, that the fitteſt Anſwer they can give him, is a ſilent Scorn and Contempt. And for that ridiculous, and ſometime I think profane, application of Sacred Hiſtory to his buſineſs of a Regiſtry, however it may ſeem to advance him to the reputation of a Wit, and recommend himſelf to ſuch little Pretenders to it, yet, I think, "is ſuch a Triumph of Wit, as ar-
"gues an utter defeat of his Reaſon; and
"He deſerves to be admir'd, for no other
"reaſon, but for daring to write what a
"wiſer man would tremble to hear.

But however, one would have thought his Brethren Profeſſors might have had better quarter from him; and that he ſhould, at leaſt in honour, have kept counſel, and not have reveal'd the Myſteries

of their Trade. No; this Gentleman is a Champion for Truth, and so is acted by an higher Principle; He has a *Warrant which will justifie his breaking thro'* the thin Paper-wall of Honour and Good-breeding; and a much-stronger one too, *viz. Hunger, which justified* David *and his Men for entering the Priest's House, and eating the Shew-bread*, as himself tells us in his Preface. But, with his good leave, tho' the World should take this as an Excuse for the betraying his Profession in so foul a manner, yet he ought not to have protected himself under the Example of *David*, for the Cases are not parallel; *David* was a King, and Kings have Prerogatives, and the same Hunger which might have justified King *David* in breaking an house, would perhaps entitle a man of Mr. *Asgill*'s station to another kind of Reward. And tho', I agree with him, a man may lawfully do a great deal for Bread, yet Truth and Honesty ought still to be observ'd. And therefore, tho' I'm afraid that the whole Profession of the Law is not in that state of Innocence I could wish they were, yet I presume the World will not think them in that height of Corruption this Author would insinuate; and I hope

and

and believe they do at leaſt keep pace with their Neighbor-profeſſions, in the way to Perfection.

And now I have done with the Author it may be expected I ſhould ſay ſomething concerning a Regiſtry in general; but, for my part, whether a Regiſtry for the Enrolling of all Conveyances of Lands will be for the intereſt of the People of *England*, or not, I ſhall not take upon me to judge: without doubt, it may in time remedy ſome Defects of the Law; but whether 'twill not withal make greater Breaches upon the quiet of Title and Proportions, I queſtion not but will be well conſider'd. There is a Freedom and Liberty, which is the Privilege of the Owners of Freehold Lands, and to oblige the Regiſtring all Evidences of Titles [for tho' it be ſaid, there be ſtill a Liberty to do it, or not, yet 'tis but an ill choice to do that or worſe, and ſo is but a ſofter name for the ſame thing] has in it ſome reſemblance of Thraldom and baſe Tenure; and whether the Owners of Eſtates will not be more hamper'd and entangl'd by the effects of it than Purchaſers may be

be now and then advantag'd, will, I believe, be duly weigh'd.

The Case of Purchasers is much amended by several useful *Statutes* made in the last Reigns, and, I doubt not, may still be better secur'd against secret Incumbrances; and 'tis, I think, something of an Argument against it, that this Proposal of a Registry has been still rejected by the Wisdom of our Forefathers, and in Times when the state of Conveyancing did more require it than now it does. Innovations of this general extent and universal influence have been always attended with ill consequences, and tho' this be not without some that appear already in view, as the erecting new Offices and Officers, to be so many Bloodsuckers of the People, *&c.* yet, I am afraid, there will arise others of a more malevolent effect, which are now out of sight, and unforeseen.

I confess, a Certainty in matters of Title and Property is so popular a Subject, that whoever appears for it, and advances any thing that may contribute to it, is likely to be receiv'd as a *Messenger of Peace*,

Peace, and will be always heard as an Advocate for the People; but when their Propoſals come to be narrowly look'd into, and their ſpecious Schemes to be opened and examin'd, like *Pandora*'s *Box*, notwithſtanding all its gaudy appearance, they prove full fraught with *peſtilent Diſeaſes*, which, inſtead of miniſtring Quiet and Repoſe, do gall and diſturb, fret and diſtemper, what was before ſound and at Reſt.

And we are not without the Experience of ſome Laws in force, whoſe deſign, 'tis true, was the prevention of Fraud, *&c.* yet have furniſh'd out more Buſineſs for *Weſtminſter-hall* than the Miſchief it has prevented, cou'd perhaps have occaſion'd; witneſs the *Statutes of Uſes and Wills*, &c. and I know not what Service it is to the Publick, by quieting one Trouble to raiſe a greater.

And I wiſh the fond Admirers and the zealous Promoters of an Univerſal Regiſtry, if ever it takes place, do not find themſelves miſtaken in like manner.

But

But I affirm nothing, the King, Lords and Commons are Judges of this matter, whose Wisdom and Determinations I shall always take to be the *Criterion* of Truth and Prudence; and if They shall think fit to Establish it, be my own *Private Thoughts* beforehand never so much otherwise, I will conclude my self to have been in the wrong; and not only acquiesce in, but most heartily embrace it.

And now, how ill-natur'd a Work soever that of censuring other mens Labours may really be in most cases, yet where 'tis any where serviceable to the exposing Mistakes in matters of Publick Concern, it needs no Apology. And tho' I have not that Faith concerning the powerfulness of this Author's Doctrine, as to fear it may have forc'd its way into the good Opinion of many Intelligent Readers, yet considering the ill Consequence that may follow from the propagating Wrong Notions concerning *Title* and *Property*, that made it necessary to be examin'd; Erroneous Apprehensions in matters of Law and Government being, in my opinion, in the next degree dangerous, to Heresies in Religion.

FINIS.

1467 E. of P.

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